CO-OPERATIVE CENTRAL BANK LTD.

v.

ABDUL RAZAK YUSOF & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. C 6750 OF 1985]
4 SEPTEMBER 1990

UNINCORPORATED ASSOCIATIONS: *Whether member - Membership cheque received prior to execution of loan agreement but not yet cleared - First drawdown before execution of agreement - Co-operative Societies Act 1948, s. 30(1).*

The plaintiff bank which was incorporated under the Co-operative Societies Act 1948 (the Act) granted a loan to the 1st defendant, D1 (the principal borrower). The 2nd and 3rd defendants, D2 and D3, were sued as personal and corporate guarantors respectively.

The plaintiff was granted an O. 14 judgment and this was the defendants' appeal against that order. D1 argued that the plaintiff had no authority to grant the loan as at the date of the first drawdown on 11 May 1984, D1's cheque which was received by the plaintiff towards membership fees had not been cleared. It was argued therefore that the loan agreement on which the case was founded was unenforceable as D1 was not a member of the plaintiff on 11 May 1984, therefore by granting the loan, it was contended that the plaintiff had breached s. 30(1)(a) of the Act.

Held:

[1] D1 did qualify for the loan because on 11 May 1984 what remained to be done as far as membership was concerned was the administrative act of clearing the membership cheque, which was subsequently cleared.

[2] The first drawdown which was made before execution of the loan agreement, meant that the plaintiff had given some indulgence to D1, which must have benefitted him.

[3] As the plaintiff had the capacity and authority to grant the loan to D1, D2 and D3 were liable under the respective guarantees.

[Defendants' appeal dismissed with costs.]

Case referred to:

Malaysia Shipyard And Engineering Sdn. Bhd. v. Bank Kerjasama Rakyat Malaysia [1985] CLJ (Rep) 206 ***(dist)***

Legislation referred to:

Co-operative Societies Act 1948, ss. 30(1)

For the Defendants/Appellants - Shakir Hussein; M/s. Manaf & Shakir
For the Plaintiff/Respondent - Y. Sivaloganathan; M/s. Siva Thurai Mariany & Co.

JUDGMENT

Siti Norma Yaakob J:

The only issue that was raised by the defendants in their appeal against an O. 14 judgment is that the plaintiff, a bank incorporated under the Co-Operative Societies Act 1948, had no authority to grant the RM11 million loan to the 1st defendant, the principal borrower, as at the date of the first drawdown the 1st defendant had not yet become a member of the plaintiff.

Under s. 30(1) of the Act, the plaintiff can only make loans to:

(a) its members;

(b) its employees;

(c) its subsidiaries; and

(d) any registered society which has obtained the approval of the Registrar-General as prescribed by the rules.

In this case the plaintiff had acknowledged the receipt of a RM2 cheque from the 1st defendant on 11 May 1984 as being its membership fee and it is the defendant's contention that pending clearance of the cheque, the 1st defendant was not a member of the plaintiff on 11 May 1984, the day the first drawdown of RM3.5 million was made. Resulting from this lack of capacity and authority, it is the defendants' contention that the loan agreement dated 16 May 1984 on which this case is founded, is unenforceable against them. For this contention, the defendants rely on the case of *Malaysia Shipyard And Engineering Sdn. Bhd. v. Bank Kerjasama Rakyat Malaysia* [1985] CLJ (Rep) 206.

The issue in that case can be distinguished from the issue raised in this case before me. In the *Malaysia Shipyard* case, what needed to be determined was whether a guarantee issued by a co-operative society to non-members is caught by either s. 30 or s. 31 of the Act. In this instant case before me, what is in issue is whether the plaintiff had breached s. 30(1)(a) of the Act by making the first drawdown to a non-member.

On the facts of this case, I do not consider that when the first drawdown was made on 11 May 1984, the 1st defendant did not qualify to be granted the loan under s. 30(1)(a) of the Act. As at that date what remained to be done as far as the membership of the 1st defendant is concerned was the administrative act of clearing the membership cheque, and it was subsequently cleared for it was only on 16 May 1984 that the loan agreement was executed. The first drawdown made before the execution of the loan agreement can only mean that the plaintiff had given some indulgence to the 1st defendant, which must have benefitted him. It would be a different matter had the cheque bounced after the date of the first drawdown as clearly then the plaintiff had no capacity or statutory authority to grant a loan to a non-member and it would be acting in contravention of s. 30(1)(a).

The 2nd and 3rd defendants are sued on the personal and corporate guarantees each had executed dated 5 June 1984 and 11 May 1984 respectively and both had relied on the unenforceability of the loan agreement based on the lack of statutory capacity to escape liability under the guarantees they executed. Since I have already decided that the plaintiff had the capacity and authority to grant the loan to the 1st defendant, the appeal by all the three defendants must fail and to that end, I had dismissed it with costs.

Also found at [1991] 3 CLJ 2129